93-919

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

LINDA WHITMORE,

Petitioner

vs.

BOARD OF EDUCATION OF DEKALB COMMUNITY SCHOOL DISTRICT NO. 428, JOHN REY, President of Board of Education School District No. 428, Individually, BERNARD LOONEY, Principal, Individually, DR. JACK DEERE, District Superintendent, Individually, KEN KENNEDY, Assistant Principal, Individually, and ROBERT WILLIAMS, Assistant Superintendent, Individually,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE BROAD EQUITABLE PRINCIPLES EMBODIED IN RULE 60(B) DEMAND RECONSIDERATION OF THE GRANTING OF SUMMARY JUDGMENT.

II. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO GRANT PLAINTIFF'S MOTION PURSUANT TO RULE 60(b) BY FAILING TO FIND THAT TWO JUDGES COMING TO DIAMETRICALLY OPPOSITE CONCLUSIONS BASED ON THE SAME SET OF FACTS CONSTITUTES "UNUSUAL CIRCUMSTANCES" UNDER SAID RULE.

III. WHETHER THE DISTRICT COURT'S DECISION IS CONTRARY TO PUBLIC POLICY AND WOULD SET A PRECEDENT VIOLATING THE FINELY STRUCK BALANCE BETWEEN SCHOOL BOARDS AND TEACHERS AS PROVIDED IN THE ILLINOIS SCHOOL CODE AND CONTRARY TO THE CONGRESSIONAL INTENT EXPRESSED IN THE FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Petitioner, Linda Whitmore, respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on August 4, 1993.

OPINIONS BELOW

The Order of the Court of Appeals is reported in a table only at 1 F.3d. 1245 (7th Cir. (Ill.)) (Table). Unofficial reports include: in the District Court, Judge Roszkowski's Amended Order at 1991 WL 166939 (N.D. Ill.), Judge Reinhard's Order at 1992 WL 70339 (N.D. Ill.); and in the Court of Appeals, the Order and Opinion at 1993 WL 290936 (7th Cir. (Ill.)). All relevant opinions and orders are reproduced in Appendix "A" incorporated herein by reference.

JURISDICTIONAL STATEMENT

The opinion of the Court of Appeals was entered on August 4, 1993. An Order denying Petitioner's Petition for Rehearing with

Suggestion for Rehearing in Banc was entered on September 8, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

All relevant provisions are included verbatim in Appendix "A". Citations of relevant provisions appear below.

FEDERAL STATUTES

42 U.S.C. Section 1983

42 U.S.C. Section 2000e-2(a)

42 U.S.C. Section 1985

Family and Medical Leave Act, 5 U.S.C.A. Section 6382 (1993)

CONSTITUTIONAL PROVISIONS

U.S. CONST. amend. I

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FEDERAL RULES OF CIVIL PROCEDURE

Fed. R. Civ. P. 60(b)

STATEMENT OF THE CASE

Petitioner Linda Whitmore applied for employment to the Respondent Board of Education in the summer of 1987 (R.4) Whitmore was a single person and then employed by the Board as a full-time high school teacher from 1987 to 1989. (R.4) During her employment she performed her duties and responsibilities as a teacher in a manner that earned her the praise and admiration of her colleagues, the school administration and the Respondents herein. (R.4) Whitmore also was involved in numerous extracurricular activities, including serving as the school's theatre director. At no time during this period of her employment did the Board or any Respondent herein question the abilities, character, fitness or performance of Whitmore. (R.4)

In July of 1988, Whitmore was a victim of a rape and as a result, she became pregnant. In November of 1988, Whitmore informed Bernard Looney, the Principal of DeKalb High School, of

the rape and resultant pregnancy. (R.4) Shortly thereafter, Whitmore met with Mr. Williams, the Assistant Superintendent, and Looney to discuss the pregnancy, including maternal leave and health insurance. (R.4) At that meeting and thereafter, Williams represented to Petitioner and to others that Whitmore's pregnancy would in no way affect her employment as a teacher. As a second-year teacher, Whitmore was evaluated after this conversation on three separate occasions by both Looney and Ken Kennedy, the Assistant Principal of DeKalb High School. (R.4) On the first two evaluations, performed on November 23, 1988 and January 6, 1989, Whitmore scored in the excellent to superior range. On the last evaluation, performed on March 2, 1989, by Looney, Whitmore scored in the satisfactory to excellent range. Possible scores ranged from unsatisfactory to superior. (R. 10-Group Exhibit A). The only criticism of Whitmore in any of her evaluations was a suggestion in one

evaluation that she should "show more enthusiasm."

On March 18, 1989, Looney informally told Whitmore that she would not be retained by the board. On this day, Petitioner and her mother met with Looney and Dr. Jack Deere to inquire about the specific reason for Petitioner's termination. They would only tell Petitioner that her performance had failed to meet District expectations, although Dr. Deere did mention a feeling of empathy with Plaintiff's mother because of the Petitioner's pregnant condition as a single person. On March 19, 1989, the Board passed a resolution terminating Whitmore. (R.4) On March 20, 1989, Whitmore was formally notified of her termination by a letter from Respondent John Rey. (R. 10-Group Exhibit A). The letter stated that the reason for discharge was "the performance of your duties has failed to meet the District's expectations." No further reference was ever made as to what expectations had not been met. The letter made

no reference to any preceding evaluations, none of which had in any event notified Ms. Whitmore of any deficiency in her performance. All of such preceding notes had been positive, except for the mention of enthusiasm in one evaluation.

On May 15, 1990, Petitioner filed a Complaint with the United States District Court for the Northern District of Illinois, Western Division charging Deprivation of Civil Rights under 42 U.S.C. Subsection 1983 (App. 86), Deprivation of Civil Rights by Conspiracy under 42 U.S.C. Subsection 1985 (App. 77), Violation of Civil Rights under Title VII (App. 86), and Intentional Infliction of Severe Emotional Distress. (R.4) On February 12, 1991, the presiding Judge, Honorable Stanley J. Roszkowski, granted in part and denied in part Respondent's Motion to Dismiss. (App. 12) In doing so, the district court applied the Illinois School Code, which states, in relevant part:

> Any teacher who has been employed in any district as a full-time teacher for a probationary period of two consecutive school terms shall enter upon contractual continued service unless given written notice of dismissal stating the specific reason therefor, by certified mail, return receipt requested by the employing board at least 60 days before the end of such period. Ill. Rev. Stat. ch. 122, para. 24-11 (1989) (emphasis added.)

In that Order, the Honorable Judge made a finding that Whitmore was tenured as a matter of law. (App. 21) The district court initially found that the plaintiff was not given sufficiently specific reasons for her termination as required by law, and that Petitioner therefore had entered continued contractual service (referred to as "tenure"), had a property interest in her employment and could not be terminated without due process requirements. (App. 20, 21, 51, 52) Upon motion by Respondents this finding was stricken from the Order as premature. (App. 42)

On February 24, 1992, the case was reassigned to the Honorable Philip G. Reinhard, a newly appointed Judge replacing Judge Roszkowski. On March 18, 1992, Judge Reinhard terminated

the case by granting Respondents' Motion for Summary Judgment and denying Petitioner's Motion for Partial Summary Judgment. (App. 72) On April 15, 1992, Petitioner filed a Motion to Reconsider, pursuant to Fed. R. Civ. P. 60(b)(1), (2) and (6). On June 9, 1992, the district court denied the motion. (App. 99) Petitioner filed an Appeal to the United States Court of Appeals for the Seventh Circuit on June 17, 1992. (R.14) The United States Court of Appeals for the Seventh Circuit affirmed the lower Court's denial of Petitioner's Motion to Reconsider on August 4, 1993. (App. 1) A Petition for Rehearing was denied on September 8, 1993. (App. 102)

ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY FAILING TO GRANT PETITIONER'S MOTION PURSUANT TO RULE 60(B).

1. The Petitioner's Motion to Reconsider justifies relief under that section and should have been granted since equitable action was appropriate to accomplish justice in the instant case.

Rule 60(b) of the Federal Rules of Civil Procedure reads, in pertinent part:

> On motion and upon terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; . . . or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b)(1),(6)

Rule 60(b)(6) provides "a grand reservoir of equitable power to do justice in a particular case." Seven Elves, Inc. v. Eskenazi, 635 F.2d 401 (5th Cir. 1981). Furthermore as the Sixth Circuit noted in Fuller v. Quire, 916 F.2d 358, 361 (6th Cir. 1990), "Rule 60(b) is broadly drafted to give the trial judge discretion...to grant relief in unusual situations. It provides that the court may set aside a judgment for any other reason justifying relief from the operation of the judgment."

However, in denying Petitioner's Motion to Reconsider in the instant case, the district court relied on the language of the Seventh Circuit in Andrews v. Heinold, 771 F.2d 184,

188 (7th Cir. 1985), noting that "A party cannot use Fed.R.Civ. P. 60(b) as a substitute for appeal." (App. 100) However, in the case at bar, Petitioner's counsel was not relying on 60(b)'s protection as a means of avoiding the appellate process. Indeed, as the United States Court of Appeals for the Seventh Circuit noted in its opinion of August 4, 1993, Plaintiff filed her motion under Rule 60(b) well before the 30-day period for appeal had expired. (App. 2) Thus, it is clearly evident, as the Appellate Court noted, that "Whitmore was not attempting to evade the time limits of direct appeal under Rule 4(a)." (App. 10)

As the Appellate Court plainly indicated, the Petitioner was not attempting to evade the time limits of a direct appeal. Rather, the Petitioner was merely seeking an opportunity to receive justification as to why summary judgment was granted by Judge Reinhard, in direct contradiction with the findings of the

former presiding judge, Judge Roszkowski. Petitioner was merely seeking an opportunity to avail herself of the equitable relief which Rule 60(b) provides. Petitioner was determined to have these issues clarified by a hearing in the District Court, something she had been denied at the employment level as a single pregnant school teacher.

While Rule 60(b) is not a substitute for an appeal, "a liberal construction should be given the rule to the end that judgments which are void are vehicles of injustice not to be left standing." Klapprott v. United States, 335 U.S. 601, judgment modified, 336 U.S. 942 (1949). The Appellate Court, in affirming the District Court's decision, relied on a long line of cases involving Rule 60(b). (App. 3-6) However, those cases are distinguishable from the instant case. For instance, in Lee v. Village of River Forest, 936 F.2d 976 (7th Cir. 1991), the court affirmed the lower court's denial of Petitioner's Rule 60(b) motion. In

doing so, the court noted that the Petitioner did not file his motion until two and a half years after judgment and that he appeared to be "acting now to make up for earlier lapses in his exercise of his rights within the judicial system. The purpose of Rule 60(b) is not to reward a party for such afterthought. " Id at 980. However, while the Appellate Court relies on Lee in failing to reverse the district court's opinion, such reliance is misplaced. The Appellate Court itself noted that the Petitioner in the instant case was not trying to extend the period for appeal. She was acting well within the construction of the Federal Rules of Civil Procedure. Thus, Lee and its progeny are inapplicable to the instant case.

In the instant case injustice is clear in the rendering of the summary judgment by Judge Reinhard. Equitable principles demand review and the facts of the instant case demand reversal because the judgment entered was

manifestly unjust. As the Fifth Circuit so aptly noted in Fackelman v. Bell, 564 F.2d 734, 735 (5th Cir. 1977), the "purpose of the 60(b) motion is to permit the trial judge to reconsider such matters so that he can correct obvious errors or injustices and so perhaps obviate the laborious process of appeal."

In the instant case injustice is clear in the rendering of the summary judgment by Judge Reinhard. Equitable principles demand review and the facts of the instant case demands reversal because the judgment entered was manifestly unjust.

2. The District Court's denial of Petitioner's Motion to Reconsider was unjust in light of the "exceptional circumstances" which existed in the contrasting opinions of the judges.

While it is true that relief under Fed.R.Civ.P. 60(b) is an extraordinary remedy and is granted only in exceptional circumstances, the facts of the instant case warrant application of this remedy.

Reinsurance Co. v.-Adminstratia Asigurarilor, 902 F.2d 1275, 1277 (7th Cir. 1990) As has been previously noted, in the instant case, the first district judge made findings of fact favorable to the plaintiff which were later stricken as premature.

The findings of fact contained in Judge Roszkowski's original order and subsequently contested by the defendants were that: "Plaintiff's notice of dismissal made no reference to specific performance deficiencies; further, she had not been advised of any specific deficiencies prior to her dismissal." (App. 21, 22, 52) Furthermore, Judge Roszkowski's opinion stated: "The court finds that Defendants did not give Plaintiff sufficiently specific reasons for her termination, contrary to the requirements of the School Code. Therefore, Plaintiff was under continued contractual service as of the last day of her employment, and she had a protectable property interest in employment."

(App. 22, 52)

In response to Judge Roszkowski's Order, the Respondents filed Defendants' Exceptions to Court's Order and Motion for Reconsideration. In their motion, Respondents argued that the findings were premature and that the determination to be made on a Rule 12(b)(6) motion to dismiss is whether the allegations of the complaint are legally sufficient to state a cause of action. Furthermore, the Respondents argued that a 12(b)(6) motion is not the proper time to test the merits of the claim or judge between the factual allegations of the parties. Later, in his Order of February 12, 1991, Judge Roszkowski withdrew these premature findings, stating that "the court agrees that certain language in its Order of February 12, 1991, might be construed as making findings of fact, which are in appropriate (sic) on a motion to dismiss."

However, the case was later transferred from Judge Roszkowski to Judge Reinhard.

Despite the fact that one of his brethren had been so convinced that facts highly favorable to the Petitioner existed on the face of the pleadings that he was persuaded to make premature findings, Judge Reinhard granted Respondent's Summary Judgment motion. (App. 72) Without considering whether Judge Reinhard ever had knowledge of Judge Roszkowski's factfinding, it can not be said why one Judge found Petitioner to be tenured and entitled to due process, charges and hearing prior to termination, and the next judge in the same court room and case determines the opposite. Certainly, Petitioner as a decent citizen should be entitled to question why she is possessed of a property right per one ruling and then denied again of her employment rights by a new judge.

The Appellate Court noted that the two judges were engaged in different types of review. The Appellate Court emphasized that since the two judges were engaged in different types of

review, it was not surprising that could have reached "different conclusions." (App. 8) The Appellate Court aptly notes that Judge Roszkowski analyzed the pleadings under Rule 12(b)(6), while Judge Reinhard engaged in weighing the pleadings under Summary Judgment. However, the Appellate Court fails to address that the second standard, that of Summary Judgment, is actually a more stringent standard. Under Rule 56 summary judgment is only appropriate if there is no genuine issue as to any material fact, construing evidence in the light most favorable to the non-moving party, who is Petitioner herein. Anderson v. Liberty Lobby, Inc. 477 U.S. 242 (1986).

Essentially, Judges Roszkowski and Reinhard were engaged in the same standard of review. Respondents took exception to Judge Roszkowski's Dismissal because it was a premature ruling on the facts of the case, in essence, that Judge Roszkowski had engaged in a standard of review appropriate to a Summary

Judgment, not a Rule 12(b)(6) Motion to Dismiss. Judge Roszkowski amended his Order and struck the factual findings, not from a conclusion that he had erroneously interpreted the facts of the case, but because he had engaged in a Summary Judgment standard of review. If Judge Roszkowski had not found that he was using the same standard of review subsequently used by Judge Reinhard in his Summary Judgment, he would not have amended his Dismissal Order to reflect that no findings of fact were entered.

Those matters contained in the Order of the Honorable Stanley J. Roszkowski clearly show that material questions of fact do exist in this matter. Even the Respondents recognized in their Exception Motion that material issues of fact existed. Furthermore, Judges Roszkowski and Reinhard made diametrically opposite conclusions based not only on the same set of facts, but on the same set of facts evaluated in the context of identical language

cited from the same case authority. Both judges quoted Howard v. Board of Educ. of Freeport Sch. Dist. No. 145, 513 N.E.2d 545 (2d Dist. Ill. 1987), and predicated their opinions upon this case, yet reached opposite conclusions. (App. 51, 52, 84, 85) Certainly if two judges could differ so widely on the same issue, based on the same set of facts, evaluated in the context of identical case authority, a question of fact remains to be determined. However, Judge Reinhard took the question away from the jury, in abuse of his discretion, and terminated Petitioner's action.

The Appellate Court proceeded to note that Judge Reinhard's decision held that under Illinois law the performance deficiencies noted in Whitmore's evaluations, in conjunction with written notice of termination, met the statutory requirements, deferring to Judge Reinhard's analysis. (App. 10) However, the Appellate Court and Judge Reinhard failed to properly distinguish the facts of Howard,

properly distinguish the facts of Howard, despite Judge Roszkowski's prior analysis clearly distinguishing the two cases. In Howard, the notice of dismissal stated that the employee failed to adequately supervise employees under his control, while previous evaluations had also disclosed to the employee his deficiencies in supervision of other employees, therefore the court found that the prior evaluations were implicitly incorporated by reference as sufficiently specific notice to the employee. Howard at 548.

In the instant case, the notice of dismissal merely made the broad statement that Petitioner had failed to meet the employer's expectations, and did not contain any language similar to the comment in a prior evaluation that Petitioner failed to show sufficient enthusiasm, therefore the notice of dismissal does not implicitly incorporate the prior evaluation and is not sufficiently specific notice to Petitioner. Judge Roszkowski accurately recognized that

these cases were distinguishable and that the instant case failed to meet the standard of Howard (App. 21, 22, 51, 52), however, the Appellate Court deferred to Judge Reinhard's decision that Whitmore was not tenured. In doing so, the Appellate Court misinterpreted the holding in Howard.

The purpose of the specificity requirement is to prevent school districts from arbitrarily dismissing teachers for "vague and nebulous" reasons or an indefinite reason such as "failure to perform adequately." Burns v. Board of Educ. of Fairfield Sch. Dist. No. 112 of Wayne County, 362 N.E.2d 353 (5th Dist. Ill. 1977). It is difficult to imagine more vague and nebulous language than "the performance of your duties has failed to meet the District's expectations." Indeed, this language bears a striking resemblance to the "failure to perform adequately" that was found to be indefinite and insufficient notice in Burns. The District Court's refusal to reconsider its summary

judgement is clearly contrary to established Illinois case law, and equitable principles clearly require that court to reconsider to prevent injustice.

The Appellate Court states that Judge Reinhard's decision is "the very same conclusion arrived at by the first judge after he recognized that he had ruled prematurely on the issue." (App. 10) This is clearly a misreading of the Judge Roszkowski's order and a gross misstatement of what really occurred. Judge Roszkowski merely deleted the above-referenced sections in his original order which were contested by the Respondents in their Motion. Judge Roszkowski deleted those findings merely because he found them to be "in appropriate (sic) on a motion to dismiss".

It is clear from the language of the order that Judge Roszkowski, contrary to the Appellate Court's opinion, did not find that the statutory requirements were met in the instant case. Judge Roszkowski never found that

Ms. Whitmore was not tenured. He merely found that his finding to the contrary was "inappropriate" for the motion. In fact his words in his original opinion clearly indicate that he found Ms. Whitmore's contentions to be so strong and factually sound that he was persuaded to prematurely find in her favor on these issues.

While it is true that Judge Roszkowski vacated in part the February 12, 1991 Order, that part dealing with the finding that Petitioner was tenured as a matter of law, he did so because Respondents claimed that it was premature and outside of the scope of the matters raised in their Motion to Dismiss. (R.44) Judge Roszkowski's original findings, contrasted with Judge Reinhard's findings clearly indicate that there are indeed substantial questions of fact remaining to be resolved. However, on March 18, 1992, Judge Reinhard terminated Petitioner's action with a ruling that was in direct contradiction to the

prior ruling of Judge Roszkowski. (App. 72) Judge Reinhard's ruling terminated Petitioner's cause of action before any factual matters could be determined by the jury. Genuine issues of material fact obviously exist since two consecutive members of the same court issued contradicting rulings.

Judge Roszkowski did not enter an Amended Order because his legal conclusion was incorrect, but because it was premature. His original, and never recanted, conclusions are in direct contradiction to Judge Reinhard's conclusions in his summary judgment. If two educated and experienced judges differ as to whether Ms. Whitmore was tenured, it is likely that "reasonable minds would differ" and that material facts are in dispute.

Therefore, there is a substantial danger that Judge Reinhard's Summary Judgment was unjust, since the only circumstance that would preclude his Judgment being unjust, is a conclusion that Judge Roszkowski's findings of

fact were in error and the product of an unreasonable mind. It is evident that this direct contradiction by the jurists is an extraordinary circumstance that indicates a substantial danger that Judge Reinhard's Summary Judgment was unjust, thereby warranting a Rule 60(b)(6) Motion to Reconsider.

II. THE DISTRICT COURT'S REFUSAL TO RECONSIDER ITS DECISION WILL ESTABLISH A PRECEDENT THAT IS CONTRARY TO PUBLIC POLICY.

1. The District Court's decision violates the finely struck balance between teachers and school boards established in the Illinois School Code.

The Illinois School Code provides in relevant part:

> Any teacher who has been employed in any district as a full-time teacher for a probationary period of 2 consecutive school terms shall enter upon contractual continued service unless given written notice of dismissal **stating the specific reasons therefor . . .**

S.H.A. 105 ILCS 5/24-11 (emphasis added).

The specific reasons "must fairly apprise the teacher of the alleged deficiency upon which

the employer-school board bases its dismissal action, and with sufficient specificity to enable the teacher to refute the charge." Howard, 513 N.E.2d at 547. Judges Roszkowski and Reinhard both relied upon this authority in their orders. Furthermore, both judges relied upon Howard to conclude that prior evaluations may be incorporated by reference (App. 21, 51, 52, 84), although Judge Reinhard failed to recognize that the instant case, as mentioned previously, failed to meet the specificity requirements of Howard, since the language of the notice of dismissal did not use sufficiently specific language to incorporate the prior evaluation by reference.

This section imposes a liability on school districts to provide specific reasons for dismissal and must be strictly construed. Illinois Educ. Ass'n Local Community High Sch. Dist. 218 v. Board of Educ. of Sch. Dist. 218, Cook County, 340 N.E.2d 7 (Ill. 1975). This section was also enacted primarily to serve as

a protection for teachers and to improve school systems. Donahoo v. Board of Educ. of Sch. Dist. No. 303, 109 N.E.2d 787 (Ill. 1953). Therefore, Illinois case law has indicated that Judge Reinhard's liberal interpretation of the standard established in Howard is not only contrary to case law, but also contrary to the intent of Illinois' legislature and public policy.

As recognized in Burns and Howard and mentioned previously, the "specific reasons" requirement of the Illinois School Code strikes an important balance between employee teachers and employer school boards. As mentioned above, said School Code must be strictly construed to prevent the weakening of the protection it provides teachers. If the District Court is permitted to refuse reconsideration of its summary judgment and allows its decision to remain, this balance will be seriously disrupted. It is against the intent of the Code and against public policy to

allow school boards to provide vague and nebulous reasons such as "failure to meet expectations" and then allow courts to hold that this broad and indefinite statement implicitly incorporates any earlier criticism, even where there is no similarity between the language of the dismissal and the prior evaluation, and when that prior criticism was given the score of "satisfactory." In effect, school boards will be given wide latitude in arbitrary dismissals, since even the most vague and arbitrary dismissal is likely to fall within the standard that would be established by the District Court's decision.

2. The District Court's decision is contrary to Congressional intent expressed in the recent enactment of the federal Family and Medical Leave Act.

Congress has recently enacted the Family and Medical Leave Act of 1993 to prevent the very abuses which Petitioner alleged in her Complaint. Petitioner does not argue that this Act should be applied retroactively, but rather

suggests that this enactment clearly indicates the federal legislature's intent to prevent employers from dismissing employees that seek maternal leave or discriminating against pregnant women, as she has alleged. The Act provides in relevant part:

> Subject to section 6383, an employee shall be entitled to a total of 12 administrative workweeks of leave during any 12-month period for one or more of the following: (a) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

Family and Medical Leave Act, 5 U.S.C.A. Section 6382 (1993).

Allowing the District Court to refuse to reconsider its decision will in effect give school districts a "how-to" manual and guide giving practical advice on how to evade the provisions of the Family and Medical Leave Act and the Illinois School Code. A school board merely needs to give teachers evaluation scores that are marginally satisfactory, need never tell them that scores of "satisfactory" actually indicate unsatisfactory performance

and may be used to terminate them, and then dismiss them before they can request maternity leave, stating that somewhere in the myriad duties of a teacher, somewhere between abusing students and allowing chalk to squeak on the blackboard, they have "failed to meet the District's expectations." Mandating that the District Court reconsider its decision to grant summary judgment not only upholds and fosters current Illinois and federal legislated intent and public policy, but also will prevent a gross injustice being committed upon Petitioner.

CONCLUSION

In conclusion, the Court of Appeals erred when it failed to recognize that the District Court wrongfully denied Petitioner's Motion to Reconsider. The District Court, in its ruling granting Respondents' Motion for Summary Judgment and denying Petitioner's Motion for Partial Summary Judgment did not fully recognize and analyze all the factors involved

in the case. The District Court did not recognize that obvious issues of material fact which existed. Since the previous presiding Judge on the bench made a ruling in direct contradiction to that of Judge Reinhard, there must have been a material issue of material fact.

Furthermore, the Petitioner has shown that the District Court's ruling granting the Respondents' Motion for Summary Judgment went contrary to the "plain language" of Ill. Rev. Stat. Ch. 122, Section 24-11 (1989), as well as well-settled caselaw. Thus, Petitioner has shown that she was denied the notice required by Section 24-11 and therefore should be tenured as a matter of law. The Petitioner has shown the District Court that the well-pleaded fact, evidence and affidavits were not taken in a light most favorable to the non-movant. Instead, the Petitioner has shown the District Court that these facts, evidence and affidavits were erroneously taken in a light most

favorable to the moving party. Finally, the District Court's refusal to reconsider its decision is contrary to public policy and legislative intent, as evidenced by the provisions of the Illinois School Code and the federal Family and Medical Leave Act.

For these and other reasons, it is clear that the Court of Appeals failed to recognize that the District Court erred when it denied Petitioner's Motion to Reconsider. The District Court failed to recognize numerous factors in its original ruling and then erred when it refused to reconsider its ruling. This Honorable Court should, therefore, reverse the Court of Appeal's Order affirming the District Court's ruling denying Petitioner's Motion to Reconsider and remand this matter to the District Court for a trial on the issues,

reconsideration, or any other relief this Court deems just.

Respectfully submitted,

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